

Message Text

CONFIDENTIAL

PAGE 01 MANILA 03232 01 OF 02 060457Z

15

ACTION EA-09

INFO OCT-01 ISO-00 AID-05 CIAE-00 COME-00 EB-07 FRB-03

INR-07 NSAE-00 USIA-06 TRSE-00 XMB-02 OPIC-03 SP-02

CIEP-01 LAB-04 SIL-01 OMB-01 NSC-05 SS-15 STR-04

CEA-01 L-03 H-02 PA-01 PRS-01 /084 W

----- 026007

R 060400Z MAR 76

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 2776

C O N F I D E N T I A L SECTION 1 OF 2 MANILA 3232

E. O. 11652: GDS

TAGS: EINV, EGEN, RP, US

SUBJECT: FURTHER COMMENTARY ON ABAD SANTOS OPINION

REF: MANILA 3073

1. SUMMARY: SORIANO CORPORATION OFFICIALS ARE CONCERNED ABOUT THE IMPLICATIONS OF THE ABAD SANTOS DECISION. ALTHOUGH IT IS NOTING MORE THAN THE REAFFIRMATION OF A BASIC TENET OF PHILIPPINE CONSTITUTIONAL LAW WHICH HAS HITHERTO BEEN LARGELY DORMANT AS FAR AS FOREIGN INVESTORS HAVE BEEN CONCERNED, IT NOW APPEARS THAT THE GOP MAY BE INTENT ON ENFORCEMENT. IF SO, FOREIGNERS, INCLUDING THE SORIANOS THEMSELVES, WOULD HAVE TO GIVE UP THEIR POSITIONS IN FILIPINIZED COMPANIES. THE KEY AS THEY SEE IT IS PRESIDENT MARCOS'S INTENTION; IF MALACANANG'S PLAN IS TO USE THIS DECISION AS A FURTHER MEANS OF STRENGTHENING ITS HOLD ON THE ECONOMY, REGARDLESS OF ITS EFFECT ON THE CLIMATE FOR FOREIGN INVESTMENT, THEN THERE IS GROUND FOR CONCERN. THE FOLLOWING IS A SUMMARY OF THE COMMENTS OF SORIANO CORPORATION OFFICIALS ON THIS SUBJECT. EMBASSY SOUGHT SORIANO VIEWS SINCE IT BELIEVED THEM TO BE AMONG BEST INFORMED AND BALANCED OFFICIALS OF AMERICAN BUSINESSES HERE. END SUMMARY.

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 MANILA 03232 01 OF 02 060457Z

2. BACKGROUND-UNDER THE PHILIPPINE CONSTITUTION,

CERTAIN ACTIVITIES (E.G., MINING, SHIPPING, EXPLOITATION OF FOREST RESOURCES, ETC.) ARE RESERVED FOR "FILIPINIZED" FIRMS, I.E., FIRMS WITH PHILIPPINE MAJORITY OWNERSHIP. THE ANTI-DUMMY LAW OF OCTOBER 30, 1936 WAS BASED ON THESE PROVISIONS AND INTER ALIA FORBIDS FOREIGNERS "TO INTERVENE IN THE MANAGEMENT, OPERATION, ADMINISTRATION OR CONTROL (OF SUCH CORPORATIONS), WHETHER AS AN OFFICER, EMPLOYEE, OR LABORER...WITH OR WITHOUT REMUNERATION EXCEPT TECHNICAL PERSONNEL WHOSE EMPLOYMENT MAY BE SPECIFICALLY AUTHORIZED...". THIS LAW WAS NEVER STRICTLY ENFORCED AND WAS EMPLOYED PRINCIPALLY AGAINST THE CHINESE. NOR HAS ANY EFFORT BEEN MADE TO ENFORCE IT FOLLOWING THE TERMINATION OF LAUREL-LANGLEY ON JULY 3, 1974.

3. THIS LAW WAS SUBSEQUENTLY AMENDED BY PRESIDENTIAL DECREE 715 DATED MAY 28, 1975, TO PROVIDE THAT ALIENS MAY BE REPRESENTED ON BOARDS OF DIRECTORS IN PROPORTION TO THE SHARE OF ALIEN OWNERSHIP. IN 1974, GOODYEAR ESTABLISHED BY REAL ESTATE CO. (40 PERCENT GOODYEAR, 60 PERCENT NATIONAL DEVELOPMENT CORP.) TO ACT AS RECEIVER OF LAND DIVESTED BY GOODYEAR. GOODYEAR NAMED AMERICANS NOT ONLY TO THE BOARD OF DIRECTORS BUT AS OFFICERS OF THE COMPANY, CLAIMING THAT PD 715 MODIFIED THE PROHIBITION IN THE ANTI-DUMMY LAW QUOTED ABOVE. ON SEPTEMBER 24, 1975 SECRETARY OF JUSTICE ABAD SANTOS RENDERED AN OPINION TO THE EFFECT THAT THIS PROHIBITION STILL STANDS. GOODYEAR APPEALED, AND ABAD SANTOS ISSUED A SECOND ENDORSEMENT DATED FEBRUARY 26, 1976, REAFFIRMING HIS PREVIOUS OPINION. END BACKGROUND

4. E/C COUNSELOR AND EMBASSY LEGAL OFFICER MET WITH OFFICIALS OF A. SORIANO CORPORATION (ANSCOR) MARCH 3 TO OBTAIN THEIR VIEWS ON IMPLICATIONS OF ABAD SANTOS OPINION. THESE OFFICIALS EXPRESSED CONSIDERABLE CONCERN AND SAID THAT, IF VIGOROUSLY ENFORCED, IT COULD HAVE SERIOUS CONSEQUENCES FOR SORIANO INTERESTS. THEY POINTED OUT THAT OPINION REPRESENTS NOTHING NEW BUT IS RESTATEMENT OF WELL-KNOWN LEGAL PRINCIPLE EMBODIED IN CONSTITUTION AND ANTI-DUMMY LAW BUT WHICH HAS HITHERTO NEVER BEEN RIGIDLY OBSERVED. THEY TERMED GOODYEAR'S ACTION IN SEEKING TO PERSIST IN NAMING AMERICAN OFFICERS TO THE CONFIDENTIAL

CONFIDENTIAL

PAGE 03 MANILA 03232 01 OF 02 060457Z

BOARD OF GY REAL ESTATE "LIKE KICKING A HORNET'S NEST". INSTEAD OF LYING DORMANT, INTEREST IN THE ISSUE HAS REVIVED IN THE PRESS, AND THE DEPARTMENT OF JUSTICE HAS BEEN REPORTED AS "SEEKING ASSISTANCE FROM THE PUBLIC" IN IDENTIFYING FIRMS IN VIOLATION OF THE LAW.

5. THE SORIANO OFFICIALS SAID THAT HOW SERIOUS THE MATTER EVENTUALLY BECOMES WILL OBVIOUSLY DEPEND ON WITH WHAT

VIGOR THE GOP DECIDES TO PURSUE IT. THEY SAID
THEY HAD LEARNED THAT THE SECURITIES AND EXCHANGE COMMISSION
(SEC) IS PREPARING A LISTING ON THE BASIS OF INFORMATION
IN ITS FILES OF FIRMS APPARENTLY IN VIOLATION OF THE LAW.
THEY SUPPOSE THAT THE NEXT MOVE WILL BE FOR THE SEC TO
CIRCULARIZE THE COMPANIES TO "INVITE THEIR ATTENTION" TO
INCONSISTANCIES WITH LEGAL REQUIREMENTS. THE NEXT STEP,
IF THE GOP CHOSE TO TAKE IT, WOULD BE ENFORCEMENT. AFFECTED
COMPANIES COULD RESPOND BY RESORT TO THE COURTS SINCE THE
ABAD SANTOS PAPER IS ONLY AN ADMINISTRATIVE OPINION, NOT
A FORMAL RULING, BUT CHANCE OF SUCCESS WOULD BE SLIGHT.

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 MANILA 03232 02 OF 02 060506Z

15

ACTION EA-09

INFO OCT-01 ISO-00 AID-05 CIAE-00 COME-00 EB-07 FRB-03

INR-07 NSAE-00 USIA-06 TRSE-00 XMB-02 OPIC-03 SP-02

CIEP-01 LAB-04 SIL-01 OMB-01 NSC-05 SS-15 STR-04

CEA-01 L-03 H-02 PA-01 PRS-01 /084 W

----- 026113

R 060400Z MAR 76

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 2777

C O N F I D E N T I A L SECTION 2 OF 2 MANILA 3232

6. REVIEWING THE POTENTIAL CONSEQUENCES FOR ANSCOR, THEY
NOTED THAT, WHILE IT WAS ONCE 100 PERCENT SORIANO (AND
HENCE AMERICAN) OWNED, IT IS NOW 40 PERCENT SORIANO AND
60 PERCENT FILIPINO OWNED. IT IS AN OVERALL MANAGEMENT
AND HOLDING COMPANY BUT OWNS SOME LAND, IN PARTICULAR
THAT ON WHICH THE FIRM'S OFFICE BUILDING STANDS. IT
HAS PERHAPS A DOZEN NON-TECHNICAL ALIEN EMPLOYEES,
INCLUDING BOARD CHAIRMAN JOSE SORIANO AND PRESIDENT
ANDRES SORIANO. WHILE ANSCOR'S ACTIVITIES THEMSELVES DO
NOT BRING IT WITHIN THE SCOPE OF THE ABAD SANTOS OPINION,
THEY SAID THEY BELIEVED THAT ANSCOR'S LANDHOLDINGS RENDER
IT VULNERABLE. THEY HAD THE FOLLOWING COMMENTS WITH
RESPECT TO OTHER ANSCOR-RELATED SORIANO INTERESTS:

A. ATLAS MINING-BY VIRTURE OF THE FACT THAT IT IS ENGAGED IN MINING, IT MUST BE 60 PERCENT FILIPINO; IT ALSO OWNS LAND. IT CANNOT EMPLOY ALIENS AS OFFICERS, AND THE POSITIONS OF THE SORIANOS AS PRESIDENT AND VICE PRESIDENT ARE HENSE IN JEOPARDY. OTHER ALIENS ARE EMPLOYED IN TECHNICAL CAPACITIES AND WOULD PRESUMABLY BE EXEMPT.

B. PAPER INDUSTRIES CORPORATION (PICOP) AND PHILIPPINE OIL DEVELOPMENT (PODCO)-IN SAME POSITION AS ATLAS.

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 MANILA 03232 02 OF 02 060506Z

C. SAN MIGUEL AND PHELPS DODGE-THE ACTIVITIES OF THESE TWO CORPORATIONS WOULD NOT SUBJECT THEM TO THE ABAD SANTOS OPINION. HOWEVER, BOTH OWN LAND, AND THE ANSCOR OFFICIALS BELIEVED THEY WOULD BE VULNERABLE ON THIS ACCOUNT. ANSCOR OFFICIALS DID NOT COMMENT SPECIFICALLY ON ITS OTHER SUBSIDIARIES (ATLAS FERTILIZER, INDUSTRIAL TEXTILES, STAATS TRAVEL SERVICE), BUT WE PRESUME THAT THEY, TOO, WOULD FALL INTO THIS CATEGORY.

7. ANSCOR OFFICIALS SAID THEY WERE INFORMED THAT ABAD SANTOS HAD DISCUSSED HIS OPINION WITH PRESIDENT MARCOS PRIOR TO ITS ISSUE. THEY COMMENTED THAT MARCOS IS TOO ASTUTE AND ABAD SANTOS TOO GOOD A LEGAL MIND NOT TO BE FULLY AWARE OF THE IMPLICATIONS OF THE OPINION FOR COMPANIES WITH FOREIGN PARTICIPATION. THEY NOTED THAT MARCOS PROBABLY ALSO UNDERSTANDS THE HARMFUL IMPACT ON THE CLIMATE FOR FOREIGN INVESTMENT. WHAT MARCOS'S MOTIVES MIGHT BE (ONE OFFICIAL SPECULATED THAT HE COULD BE PICKING UP A CHIP FOR THE FORTHCOMING ECONOMIC NEGOTIATIONS WITH THE U.S.) AND HOW FAR HE INTENDS TO GO IS UNCLEAR. ALL AGREED THAT THE OPTIONS ARE HIS, ALTHOUGH HE MIGHT FIND IT SOMEWHAT DIFFICULT TO ISSUE ANY DECREE WHICH SOUGHT TO RENDER THE OPINION INVALID.

8. COMMENT: ALTHOUGH NOT AS EMOTIONAL AS MANY OF THOSE POTENTIALLY AFFECTED IN THE AMERICAN BUSINESS COMMUNITY, ANSCOR IS CLEARLY WORRIED. TO SOME EXTENT, WE FIND THEIR CONCERN EXAGGERATED. AS MENTIONED ABOVE, THE OPINION ITSELF CHARTS NO NEW GROUND; IT IS MERELY A REITERATION OF A WELL-KNOWN POINT OF LAW. FURTHER, IT SUPERFICIALLY APPEARS TO US THAT ADAPTATION MIGHT BE POSSIBLE, INCLUDING SUCH STEPS AS LAND DIVESTMENT, THE RELINQUISHING OF CORPORATE TITLES (THE OPINION DOES NOT AFFECT BOARD MEMBERSHIP ITSELF), OR EMPLOYMENT ON A CONTRACT BASIS. THE TRUE MENACE APPEARS TO LIE IN THE GENERAL UNCERTAINTY ABOUT WHAT THE APPEARANCE OF THE OPINION AT THIS TIME, AS WELL AS THE PUBLICITY IT WAS ACCORDED IN THE GOP-INFLUENCED PRESS, REALLY MEANS. IS IT

MERELY A LOGICAL CONSEQUENCE OF AN EFFORT BY GOODYEAR TO
TEST WHAT THE FIRM PROBABLY KNEW WAS AN UNTENABLE LEGAL
POSITION? IS IT A TACTICAL MOVE BY MARCOS TO IMPROVE HIS
BARGAINING POSITION WITH THE U.S.? OR DOES IT MEAN THE
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 MANILA 03232 02 OF 02 060506Z

START OF ANOTHER MOVE ON THE PART OF MALACANANG TO STRENGTHEN
ITS GRIP ON THE ECONOMY AND TO FURTHER WEAKEN ITS BUSINESS
RIVALS (AND THE SORIANOS ARE UNCOMFORTABLY IDENTIFIED WITH
THE OLIGARCHS). IF THE LATTER IS THE CASE THERE MAY BE
GROUNDS FOR CONCERN.
SULLIVAN

CONFIDENTIAL

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: NATIONALIZATION, FOREIGN INVESTMENT, LAW, BUSINESS FIRMS, ALIENS
Control Number: n/a
Copy: SINGLE
Draft Date: 06 MAR 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: izenbei0
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976MANILA03232
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760085-0871
From: MANILA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760387/aaaaczby.tel
Line Count: 239
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 76 MANILA 3073
Review Action: RELEASED, APPROVED
Review Authority: izenbei0
Review Comment: n/a
Review Content Flags:
Review Date: 07 JUN 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <07 JUN 2004 by greeneet>; APPROVED <28 SEP 2004 by izenbei0>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: FURTHER COMMENTARY ON ABAD SANTOS OPINION
TAGS: EINV, EGEN, RP, US, (SANTOS, VICENTE ABAD)
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006